

Montenegro

Foreign Investment Law (2011)

Unofficial translation

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Foreign Investment Law

Official Gazette No. 18/11

Hereby, I announce the Foreign Investment Law passed by the 24th convocation of the Parliament of Montenegro, at its second session of its first regular (spring) assembly in 2011, on 17 March 2011.

Number: 01-373/2

Podgorica, 25 March 2011

President of Montenegro, Filip Vujanović, m.p.

Pursuant to article 82, paragraph 1, item 2 and article 91, paragraph 2 of the Constitution of Montenegro, the 24th convocation of the Parliament of Montenegro, at its second session of its first regular (spring) assembly in 2011, on 17 March 2011 has reached the following.

I. General provisions

Article 1

This Law shall regulate the modes of foreign investments, the rights of foreign investors, protection on foreign investors, promotion and other issues of importance for foreign investments in Montenegro.

Article 2

For the purpose of this Law, a foreign investor shall be:

- Foreign legal entity or individual;
- Legal entity having at least 10% share of foreign capital into the total entity's capital;
- Legal entity established in Montenegro by a foreign individual;
- Citizen of Montenegro having place of residence abroad.

For the purpose of this Law, a foreign investor shall also be considered a person who has been granted Montenegrin citizenship in accordance with the Law, based on the executed investments.

Article 3

For the purpose of this Law, a foreign investment shall be a pecuniary investment, investment in goods, services, proprietary rights and securities, in accordance with the law.

Foreign investment made in goods and proprietary rights shall be understood to mean an investment in fixed assets, in accordance with accounting regulations.

II. Modes of foreign investments

Article 4

Foreign investor in Montenegro may:

- establish an enterprise (alone or jointly with other investors); - establish a foreign entity affiliate;
- acquire interest and shares in the legal entity;
- purchase an enterprise.

Article 5

Foreign investment may be executed through the concession agreement, franchising agreement, agreement on financial leasing, agreement on sale and purchase of real estates and other agreement, as provided by the law.

III. Foreign investment principles

Article 6

At the territory of Montenegro, foreign investor may establish an enterprise and invest in the enterprise, under the same terms and conditions provided for nationals when establishing enterprises, i.e. investing assets in enterprises (national treatment), unless provided otherwise by this Law.

Article 7

Foreign investor may invest assets in domestic legal entity, i.e. only with national legal entity or individual establish the enterprise for manufacturing and trade of armament and military equipment.

Foreign investor may not have more than 49% of share in capital or interest, i.e. voting rights in the enterprise referred to in paragraph 1 of this article.

Article 8

Foreign investor may invest in the enterprise referred to article 7 of this Law, only after being granted the approval issued by the state authority in charge of foreign trade (hereinafter referred to as: the Ministry), along with the opinion obtained from the state authority in charge of defense.

In the approval-granting procedure referred to in paragraph 1 of this Article, a particular consideration shall be given to the quality, type and scope of the foreign investment involved.

Regulation on methodology to assess the quality, type and scope of the foreign investments referred to in paragraph 2 of this Article shall be prescribed by the Ministry, within 120 days from the date of enactment of this Law.

Article 9

An enterprise for manufacturing and trade of armaments and military equipment cannot negotiate the arrangement referred to in Art. 4 and 5 of this Law before it receives approval from the Ministry.

Article 10

Foreign investments in insurance companies, banks and other financial institutions and free zones shall be made in conformity with the Law.

IV. Protection of foreign investors

Article 11

The assets of foreign investor may not be subject to expropriation, except when public interest is determined by law or on the basis of law, in which case a compensation shall be payable in accordance with the Law.

Article 12

A foreign investor who suffers damage as a consequence of war or emergency shall be entitled to compensation for such damage which shall not be less than the fee attributable to the domestic legal entity and natural person in accordance with the Law.

A foreign investor shall be entitled to compensation for damage caused by unlawful or irregular work of a public official or public authority, in accordance with the Law.

V. Incitement and promotion of foreign investments

Article 13

Incitement and promotion of foreign investments that contribute to the economic development of Montenegro shall be conducted on the basis of the Strategy for the Promotion of Foreign Investments (hereinafter referred to as: the Strategy).

Strategy shall be adopted by the Government of Montenegro (hereinafter referred to as: the Government) for a period of five years.

Article 14

The strategy must contain:

- analysis of the situation in the field of foreign investments;
- analysis of fulfilling contractual obligations in the field of foreign investments;
- barriers in promotion of foreign investment and guidance for their elimination;
- analysis of investment opportunities by areas, regions and target markets;
- guidelines for incitement and promotion of foreign investments;
- priority actions and measures in encouraging and promoting foreign investment;
- deadlines for implementing the Strategy, with defined priorities and possible funding resources;
- other data relevant to the incitement and promotion of foreign investments.

Article 15

Professional tasks to promote foreign investments shall be conducted by the Montenegrin Agency for the Promotion of Foreign Investments (hereinafter referred to as: the Agency).

The Agency is a legal entity performing activities of public interest.

Article 16

The Agency shall perform the following tasks:

1. carry out professional tasks to promote investment opportunities in Montenegro, in accordance with the Strategy and the Agency's annual work programme that specifically relates to:

- preparation, development and presentation of information on business opportunities in investing in Montenegro;
- providing technical assistance to foreign investors for investments in certain areas and sectors of the economy;
- arranging for direct contacts between foreign and domestic enterprises;
- boosting cooperation with relevant international institutions to promote foreign investment;

2. monitor the implementation of foreign investment, cooperate with state agencies, local self-government bodies and state institutions in Montenegro with the aim to promote and support the realization of investments;

3. provide information on foreign investments to the Government in order to improve the investment environment;

4. keep records of foreign investors and foreign investment;

5. and other activities in the field of foreign investments, in accordance with the Law. Funding for the Agency shall be provided from the budget of Montenegro and donations.

Article 17

The Agency shall have the Governing Board and the Director.

Article 18

The Agency is governed by the Governing Board, in accordance with this Law and the Statute of the Agency. The Governing Board of the Agency shall:

- adopt the Statute which shall be approved by the Government, the regulation on organization and other regulations of the Agency;
- set up an annual work programme along with the financial plan;
- decide on use of funds of the Agency;
- adopt the annual report on the work of the Agency and the annual financial statement;
- decide on the amount of compensation for members of the Governing Board, which shall be approved by the Government;

- decide on the appointment of independent auditor;
- decide on other matters, in accordance with the Law and the Statute of the Agency.

Article 19

The Governing Board shall consist of a chairman and two members.

The Governing Board shall be appointed and dismissed by the Government, for a period of four years, upon proposal of the state agency in charge of economy matters.

Mode of work and decision-making of members of the Governing Board shall be regulated by the Statute of the Agency.

Article 20

The Agency shall be managed by the Director.

The Governing Board shall propose to the Government the Director of the Agency, in accordance with the public competition.

The Government shall appoint the Director of the Agency for a term of four years.

Article 21

The Director of the Agency shall:

- represent the Agency;
- manage the Agency's operations and be responsible for the legality of the Agency;
- draft reports on the work of the Agency and other reports for the Governing Board of the Agency;
- execute the decisions of the Governing Board;
- propose regulation on organization and systematization of the Agency;
- perform other duties stipulated by Law and the Statute of the Agency.

Article 22

The Director and employees in the Agency shall exercise the rights and obligations arising from employment in accordance with the general rules of procedure.

Article 23

The Agency shall submit to the Government a report on the work and operations, so as the annual financial statement with report of an independent auditor.

Article 24

Incitement of foreign investments and guidance of strategic activities towards promotion and encouragement shall be carried out by the Council for Foreign Investments (hereinafter referred to as: the Council).

The Council shall:

- consider the implementation of the Strategy and give opinion on development of foreign investments;

- provide guidance for changes in activities relating to promotion of foreign investments, depending on the realization of investments and changes that occur in the market during the period of implementation of the Strategy;
- consider other issues of relevance to the promotion and guidance of foreign investment.

Article 25

The Council shall consist of a chairman and six members.

The chairman of the Council shall be the Prime Minister.

The members of the Council shall be: three ministers appointed by the Government, Chairman of the Governing Board of the Association of Municipalities, the President of the Chamber of Economy of Montenegro and one member proposed by the Association of Foreign Investors, whose election shall be approved by the Government.

The representatives of Association of foreign investors shall be elected for a term of two years, with possibility of reelection.

Administrative and technical affairs for the needs of Council shall be performed by the Agency.

The Council shall adopt the Rules of Procedure.

VI. Recording of foreign investments

Article 26

Recording of foreign investments shall be performed by the Agency.

Record of foreign investments shall, in particular, contain:

- name and seat, i.e. name and address of the foreign investor;
- name and address of the parent legal entity in the case when a foreign investor establishes a part of foreign enterprise;
- type of business of the foreign investor;
- amount, type of foreign investment and capital structure;
- other information of relevance to the record of foreign investments.

The recording referred to in paragraph 1 of this Article shall be carried out on the basis of data referred to in Article 27 of this Law.

Article 27

Data on foreign investments shall be submitted by:

- the Central Registry of the Commercial Court (the data on the enterprise and part of an enterprise which has the status of foreign investor in accordance with Article 2 of this Law);
- the Central Depository Agency (the data on the share capital of foreign investor);

- the state authority competent for registration of immovable property in the cadastre (the data on ownership and other real rights on immovable property of foreign legal entities and natural persons).

Article 28

Modification of data referred to in Article 27 of this law shall be submitted to the Agency on a quarterly basis.

Data from records may be published and disclosed only collectively, without revealing any personal information and data that have been, by law, designated as secret.

Article 29

More detailed content of data referred to in Article 26 of this Law and the manner of submitting information under Article 27 of this Law shall be regulated by regulation of the Ministry in charge of economy matters.

VII. Settlement of disputes

Article 30

Any dispute arising from foreign investment shall be resolved by the competent court in Montenegro, unless the decision on establishment i.e. the agreement on investment stipulates that such disputes are settled before domestic or foreign arbitration, in compliance with international conventions.

If a contracting party is the Government, then until the Convention of the International Center for the Settlement of Investment Disputes (ICSID Convention) is signed, the disputes arising from foreign investments shall be resolved before domestic or foreign arbitration in accordance with the additional rules of the ICSID Convention for countries that are not signatories to the ICSID Convention.

If the contracting parties are domestic or foreign legal entities and natural persons, then disputes arising from foreign investments shall be resolved before domestic or international arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Rules.

VIII. Transitional and final provisions

Article 31

The activities to promote foreign investments referred to in Art. 15 and 16 of this Law shall be performed by the Montenegrin Agency for the Promotion of Foreign Investments, established by the Decision on establishing the Agency for the Promotion of Foreign Investments (Official Gazette of the Republic of Montenegro no. 33/04, 11/07, 25/07 and Official Gazette of Montenegro no. 8 / 07).

The Agency shall be obliged to establish a record of foreign investments within 120 days from the date of enactment of this law.

The Central Registry of the Commercial Court, the Central Depository Agency and the state authority competent for the registration of immovable property shall be obliged to submit data under Article 27 of this Law no later than 90 days from the date of enactment of this Law.

The Agency referred to in paragraph 1 above shall be obliged to harmonize their operations with this Law within 30 days from the date of appointment of the Governing Board of the Agency.

Article 32

Governing Board members shall be appointed within 45 days from the date of enactment of this Law.

Until the appointment of members of the Governing Board, all duties of the Governing Board shall be performed by the members of the Governing Board appointed to the entry into force of this Law. Director of the Agency shall be appointed within 45 days from the date of appointment of the Governing Board.

Until his/her appointment as a Director of the Agency, all duties of the Director shall be performed by the Director appointed to the entry into force of this Law.

Article 33

The Law on Foreign Investments (Official Gazette of the Republic of Montenegro no. 52/00 and 36/07 and Official Gazette of Montenegro no. 40/10) shall cease to be valid on the day of this Law coming into effect.

Article 34

This law shall come into force on the eighth day as of the day of its publication in the Official Gazette of Montenegro.

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